

**REMARKS/ARGUMENTS**

Claims 26-32 and 34 remain pending in the instant application. No claims are amended or canceled by this response.

In the previous office action, the Examiner rejected the pending claims as obvious based upon U.S. patent no. 6,100,030 to McKasky Feazel et al. ("the McKasky Feasel patent"), in combination with U.S. patent no. 6,355,423 to Rothberg et al. ("the Rothberg patent"). Applicants duly traversed these rejections by demonstrating the absence of any teaching or suggestion in the references to define an experimental parameter over a network.

In the most recent office action, the Examiner has maintained rejection of the pending claims based upon the McKasky Feasel and Rothberg patents, now also in combination with U.S. patent no. 6,456,942 to Anderson ("the Anderson patent"). These claim rejections are traversed as follows.

The instant patent application was filed on September 15, 1999. The Anderson patent was filed on January 25, 2000

The Examiner has cited the Anderson patent as prior art under 35 U.S.C. 102(e), presumably based upon its claim of priority to U.S. provisional patent application no. 60/116,954, filed January 25, 1998 (a date cited on both the cover page, and at col. 1, line 6 of the patent). Under 35 U.S.C. 119(e) however, a nonprovisional application cannot claim priority to a provisional application filed more than one year earlier.

Accordingly, Applicants hereby traverse the instant claim rejections by declining to recognize the Anderson patent as prior art to the instant application. Based upon the relevance of the actual priority date of the Anderson patent to its status as legitimate prior art, Applicants request that the Examiner clarify this issue.

Appl. No. 09/397,494  
Amdt. dated February 9, 2004  
Reply to Office Action of November 7, 2003

PATENT

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



Kent J. Tobin  
Reg. No. 39,496

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, 8<sup>th</sup> Floor  
San Francisco, California 94111-3834  
Tel: 650-326-2400  
Fax: 650-326-2422  
KJT:km:ejt  
60126071 v1